



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 14, 1996

Ms. Margaret E. Baker
McGinnis, Lochridge & Kilgore, L.L.P.
1300 Capital Center
919 Congress Avenue
Austin, Texas 78701

OR96-0960

Dear Ms. Baker:

As counsel for the Round Rock Independent School District (the "school district"), you ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 40503.

The school district received two requests for various information including information about Dr. Mary Anne Nericcio, an elementary school principal, and Ms. Pat Peterson, who evidently the school district has employed as a teacher, as a principal, and as the Director of Personnel Services. You ask for guidance as to what information is protected from required public disclosure pursuant to Education Code section 21.355 and section 552.102 of the Government Code.

Education Code section 21.355 provides that "a document evaluating the performance of a teacher or administrator is confidential." This provision makes confidential any document that evaluates the performance of a teacher or administrator. See Open Records Decision No. 643 (1996). We have marked the portions of the requested information to which section 21.355 applies. The school district must withhold those portions from required public disclosure pursuant to section 552.101 of the Government Code.¹

¹Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information protected by other statutes.

Section 552.102 reads as follows:

(a) Information is excepted from [public disclosure] if it is information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, except that all information in the personnel file of an employee of a governmental body is to be made available to that employee or the employee's designated representative as public information is made available under this chapter. The exception to public disclosure created by this subsection is in addition to any exception created by Section 552.024. Public access to personnel information covered by Section 552.024 is denied to the extent provided by that section.

(b) Information is excepted from [public disclosure] if it is a transcript from an institution of higher education maintained in the personnel file of a professional public school employee, except that this section does not exempt from disclosure the degree obtained or the curriculum on a transcript in the personnel file of the employee.

The test to be applied to information claimed to be protected under section 552.102(a) is the same test formulated by the Texas Supreme Court in *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977), for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the Government Code. *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Consequently, information may be withheld under section 552.102(a) if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See id.* We do not believe the requested information contains highly intimate or embarrassing facts about Dr. Nericcio's or Ms. Peterson's private affairs.

However, section 552.102 refers to information covered by section 552.024 of the Government Code. Section 552.024 provides a method for each current and former employee or official of a governmental body to choose whether to allow public access to information in the governmental body's custody that relates to the person's home address, home telephone number, social security number, or information that reveals whether the person has family members. If a person has made an election to keep such information confidential at the time a governmental body receives a request for such information, the governmental body must withhold such information from public disclosure pursuant to section 552.117 of the Government Code. *See Open Records Decision No. 530 (1989).*

Thus, the school district must withhold the information covered by section 552.117 if, at the time the school district received the requests, Dr. Nericcio or Ms. Peterson had elected to keep such information confidential in accordance with section 552.024 of the Government Code. Gov't Code § 552.117.

Section 552.102(b) excepts from disclosure the transcripts of Dr. Nericcio and Ms. Peterson. However, the school district may not withhold from disclosure the degree obtained and the curriculum on those transcripts.

Even if Dr. Nericcio or Ms. Peterson had not elected to keep the section 552.117 information confidential, social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the files are confidential under section 405(c)(2)(C)(viii)(I), and, therefore, excepted from public disclosure under section 552.101 of the Open Records Act on the basis of that federal provision. We caution, however, that section 552.353 of the Open Records Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the school district pursuant to any provision of law enacted on or after October 1, 1990.

Finally, we note that one of the files you submitted to this office for review includes an Employment Eligibility Verification Form I-9.² Form I-9 is governed by title 8, section 1324a of the United States Code, which provides that the form "may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. 8 U.S.C. § 1324a(b)(5); *see* 8 C.F.R. § 274a.2(b)(4). Release of this document under the Open Records Act would be "for purposes other than for enforcement" of the referenced federal statutes. Accordingly, we conclude that the Form I-9 is confidential under section 552.101 of the Open Records Act and may only be released in compliance with the federal laws and regulations governing the employment verification system.

²Although you did not claim any exception for this document, this office will raise section 552.101 on behalf of a governmental body. Open Records Decision Nos. 481(1987), 480 (1987).

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script, reading "Kay Guajardo".

Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

Ref.: ID# 40503

Enclosures: Marked documents

cc: Ms. Mary Beth Schutt
12301 Saber Trail
Austin, Texas 78750
(w/o enclosures)